

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BC BS00078

CASE NAME: LEON MOTLEY

HEARING:
Accounting Review

	COUNSEL:
EDWARD FRANCO	(PET)...DAVID W BROWN
YOLANDA FRANCO	(PET)...DAVID W BROWN
LEON MOTLEY	(CEP)...

GENERAL INFORMATION: Continued from 7-6-04, 8-10-04 and 9-28-04. Nothing new filed.

THIS CASE IS SET FOR HEARING ON accounting review

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Matter is set for accounting review. No accounting has been filed.

RECOMMENDATION:

When an accounting is not filed as required the court shall cause notice to be given to conservator or guardian and attorney. The court shall set the accounting for hearing within 60 days. Failure to file the accounting as ordered or within 45 days of receipt of notice, whichever is longer shall constitute a contempt. Pr.C.§ 2620.2

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HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BG BS00384

CASE NAME: AMANDA AND MARISSA TRUJILLO

HEARING:

Petition for Appointment of Guardian

COUNSEL:

ANNA THOMPSON	(GP)...PRO/PER
TRACY J THOMPSON SR	(GP)...PRO/PER
AMANDA TRUJILLO	(MIN)...
MARISSA TRUJILLO	(MIN)...

GENERAL INFORMATION: continued from 8-17-04 and 9-28-04. Mother was awarded liberal visitation. Matter was referred to the Court Investigator. Report is in the file.

THIS CASE IS SET FOR HEARING ON Petition for guardianship, person only, by aunt and uncle, minors 16 and 10.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Father was served by mail in Salinas Prison. Did court wish to require personal service?

RECOMMENDATION:

Require mother to file written objections.

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HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BG BS00385

CASE NAME: JAMES SOTO, ET AL

HEARING:

Petition for GUARDIANSHIP 09/21/04

COUNSEL:

THERESA C DINGMAN	(PET)...PRO/PER
JAMES ANTHONY SOTO	(MIN)...
AMANDA MARIE SOTO	(MIN)...
CHARLES MICHAEL RUBLE	(MIN)...
DAVID GLEN CAMPBELL	(MIN)...

GENERAL INFORMATION: there are 3 separate petitions in this file. Petitioner alleges that she is the maternal grandmother of all the children. Court has referred the matters to the Court Investigator for report and recommendation. We are awaiting the report.

Petition 1:

THIS CASE IS SET FOR HEARING ON Petition for guardianship, person only, by maternal grandmother, minor (David Campbell) 12

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Petition appears procedurally complete.

Petition 2:

THIS CASE IS SET FOR HEARING ON Petition for guardianship, person only, by maternal grandmother, minor 9 (Charles Ruble).

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Petition appears procedurally complete.

Petition 3:

THIS CASE IS SET FOR HEARING ON Petition for guardianship, person only, by maternal grandmother, minors 7 and 4 (Amanda and James).

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Petition appears procedurally complete.

RECOMMENDATION:

None.

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HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BG BS00386

CASE NAME: KAYLA BACA & PHILIP BACA

HEARING:

Petition for Appointment of Guardian

COUNSEL:

DEBRA KAY JOHNSON (GP)...PRO/PER

KAYLA LYNN BACA (MIN)...

PHILIP ANTHONY BACA (MIN)...

GENERAL INFORMATION: Natural parents nominate maternal aunt as guardian for minors. Consent to act in file. Continued from 8-31-04.

THIS CASE IS SET FOR HEARING ON: Petition for appointment of guardian, by maternal aunt, person only, minors 9 and 12.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Appears service is complete.

RECOMMENDATION:

None.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BG BS00394

CASE NAME: ATHAN RAY SANDERS

HEARING:

Petition for Appointment of Guardian

COUNSEL:

LANCE CARLTON COWLEY (PET)...PRO/PER
ATHAN RAY SANDERS (MIN)...

GENERAL INFORMATION: Temporary letters issued 9-21-04.

THIS CASE IS SET FOR HEARING ON Petition for guardianship, person only, by paternal grandfather, minor 5 mos.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Petition appears procedurally complete.
2. Court referred the matter to the Court Investigator. Report is in the file.

RECOMMENDATION:

None.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BG BS00398

CASE NAME: LANISE CLAY

HEARING:

Petition for Appointment of Guardian

COUNSEL:

CANDANCE CLAY	(PET)...PRO/PER
LANISE CLAY	(MIN)...

GENERAL INFORMATION: Temporary orders were denied.

THIS CASE IS SET FOR HEARING ON Petition for guardianship, estate only, by mother, minor 4.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Court referred the matter to the Court Investigator. There is a notice of no report in the file.
2. Petitioner requests all Pr.C. § 2591 powers, because the petitioner feels that they would be convenient in conducting the financial affairs. Petitioner also indicates that no bond should be required, as petitioner intends to use the assets for the benefit of the minor. Court may wish to deny 2591 powers entirely and order the assets placed in a blocked account.
3. If court grants 2591 powers then bond should be set in the amount of \$187,500. It is unlikely that the self represented litigant will be able to obtain bond. The alternative is to place the assets in a blocked account.
4. File notice of hearing and proof of service per order prescribing notice.

RECOMMENDATION:

Require assets placed in a blocked account.

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HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BG BS00400

CASE NAME: JACQUELYN G RULLAN

HEARING:

Petition for Appointment of Guardian

COUNSEL:

JANETTE G RULLAN (PET)...PRO/PER
JACQUELYN G RULLAN (MIN)...

GENERAL INFORMATION:

THIS CASE IS SET FOR HEARING ON Petition for guardianship, person only, by sister, minor 16.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. File notice of hearing and proof of personal service on minor.

RECOMMENDATION:

None.

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HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BG BS236

CASE NAME: IN THE MATTER OF JOHNATHAN DARREN SCHWELGIN

HEARING:

Motion Re: TO BE RELIEVED AS COUNSEL

COUNSEL:

TERENCE O'CONNOR	(PLA)...
LEIGHANN HALLS	(PLA)...
GARY BARDEN	(OP)...KYLE E WOOLDRIDGE
LEIGH ANN HALLS	(PET)...ANNE E LEWIS
TERRANCE O'CONNOR	(PET)...PRO/PER

GENERAL INFORMATION: this matter is on calendar on 11-23-04 for petition to terminate. Depending on the outcome of that matter there may or may not be contested issues.

THIS CASE IS SET FOR HEARING ON petition to be relieved as counsel for Leighann Halls

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Counsel alleges that there has been a breakdown in the attorney/client relationship and that there are no contested matters pending. See general information above.
2. Petition appears to be procedurally complete.

RECOMMENDATION:

None.

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HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BPRBS00123

CASE NAME: IN THE ESTATE OF ROSEMARY SCHWEIKART

HEARING:

Motion Re: TO REVOKE AND APPOINT SUCCESSOR REPRESENTATIVE

COUNSEL:

ROSEMARY SCHWEIKART (DEC)..
LAIRD SCHWEIKART (PET)...JOHN F WEBER
DANIEL R SCHWEIKART (OBJ)..
JON P SCHWEIKART (KARL H GRIESBAUM)...KARL H GR

GENERAL INFORMATION: It appears that this petition has been withdrawn in favor of the petition on the next page.

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HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BPRBS00123

CASE NAME: IN THE ESTATE OF ROSEMARY SCHWEIKART

HEARING:

Petition for REMOVAL OF PERSONAL REPRESENTATIVE & APPOINTMENT OF
SUCCESSOR PERSONAL REPRESENTATIVE

COUNSEL:

ROSEMARY SCHWEIKART	(DEC)...	
LAIRD SCHWEIKART	(PET)...	JOHN F WEBER
DANIEL R SCHWEIKART	(OBJ)...	
JON P SCHWEIKART	(KARL H GRIESBAUM)...KARL H GR

GENERAL INFORMATION:

THIS CASE IS SET FOR HEARING ON petition to revoke letters and appoint a successor representative.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Petitioner alleges that the case has been open since 1994. Nothing has happened and there have been no accountings or status reports. Petitioner alleges that upon the death of the decedent it was agreed that the administrator and the father of the beneficiaries could remain in the house as long as the father lived. The administrator required the father to vacate the premises in 3-04 and has moved his girlfriend and her child into the home. As this is alleged to break the agreement they want the administrator to move forward with the administration of the estate. The administrator has not moved forward and refuses to return their calls.
2. If the court feels that there are sufficient grounds to have a hearing on the removal of the administrator the court should issue a citation and set the matter for O.S.C. re removal. The petitioner will have to have the citation served.
3. If the court thereafter removes the administrator and there is a vacancy in the office, the petitioner may file a formal petition to be appointed successor administrator. He must go through all the same formalities as an original petition

except that publication is not required. To date he has not filed the proper petition to be named the successor administrator.

4. Petitioner also requests that pending the O.S.C. hearing that the power of the administrator be suspended.
5. Petitioner has also incorporated into this petition a request that the property be listed with Coldwell Banker for sale. This would appear to be a premature request until the issues of the removal are resolved.
6. Petitioner must also notice the bonding company of the O.S.C. re removal.

RECOMMENDATION:

None.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BPRBS00503

CASE NAME: ESTATE OF ALEJANDRO C. ROMERO

HEARING:

Hearing re: 1ST & FINAL ACCOUNTING

COUNSEL:

ALFREDO C. ROMERO (PET)...KENNETH A. IWAKOSHI

ALEJANDRO C ROMERO (DEC)...

ELEO ROMERO (SA)...WEISS & IWAKOSHI

GENERAL INFORMATION: continued 10-5-04. Nothing new filed.

THIS CASE IS SET FOR HEARING ON first and final accounting.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Petitioner alleges that the creditor's claims "have been rejected by the passage of time." I don't know what that means. If the petitioner is attempting to say that they took no action and therefore since more than 3 months passed without litigation the claims are now void this is an incorrect statement of the law. The only person who can rely on the passage of time to constitute a denial of claim is the creditor. The administrator must either approve or reject the claim. Until the administrator does so, the estate remains liable for the amount of the claim and the time for filing litigation does not begin to run. Therefore if my interpretation is correct then court needs to order petitioner to either allow or reject the claims. Court will then have to continue the matter for 3 months after the rejection to allow for the filing of litigation or order sufficient assets set aside to cover the potential claims.
2. Petitioner requests reimbursement of \$10,886.48 in costs advanced. Amount is itemized.
3. Petitioner appears to be including in the requested orders an order that certain New Mexico real property be distributed and a "pay on death" insurance policy be

distributed. This court has no jurisdiction over those items and the final order should not include orders in relation to those items.

4. Pr. C. § 10800 was amended on 1-1-02. Fees are calculated under the pre-amendment formula. Under the new formula fees would be \$5,346.94, not \$4,047.96 as indicated in the petition. Are petitioner and counsel waiving the additional fees? Also, there are apparently no liquid assets. How are counsel and administrator to be paid? Please file supplemental.

RECOMMENDATION:

If petition granted court will have to set future dates. Set hearing for filing of receipts and final discharge order for 11-15-05.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BPRBS00527

CASE NAME: ESTATE OF LAURA LYNN

HEARING:
Status Conference

COUNSEL:
WILLIAM A MILLOY (PET)...PRO/PER
LAURA EVELYN LYNN (DEC)...

GENERAL INFORMATION: Continued from 7-13-04. Nothing new filed.
THIS CASE IS SET FOR HEARING ON Status Conference arising out of OSC re
Contempt heard on 3-20-04

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Matter has been continue several times for Mr. Milloy to file receipt for himself as trustee and a final discharge order. Nothing filed.

RECOMMENDATION:
None.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BPRBS00686

CASE NAME: BEATRIZ C HERKERT

HEARING:

Petition for Probate of Will & Letters Testamentary

COUNSEL:

HESTER MCCARTY	(PET)...	JOHN F WEBER
OLIVIA ANN BURNS	(PET)...	JOHN F WEBER
BEATRIZ C HERKERT	(DEC)...	

GENERAL INFORMATION:

THIS CASE IS SET FOR HEARING ON Petition for probate with full I.A.E.A. and no bond.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Will waives bond.
2. File proof of publication.
3. Sharon Russell Turner was named in the will, but is not on attachment 9. File supplemental.
4. An inventory and appraisal has been filed. However, still need original signatures on it.

RECOMMENDATION:

If petition granted court will have to set future dates. Set hearing for filing of inventory and appraisal for 5-24-05. Set hearing for filing of status report and/or accounting for 1-17-06. Any accounting to be filed 30 days in advance.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BPRBS00691

CASE NAME: ROBERT V MOYA

HEARING:

Hearing re: 1ST ACCT; PET FOR PRELIM DIST & PARTIAL ALLOWANCE

COUNSEL:

MARY BEAUCHAMP (PET)...RALPH F GEORGE JR.
ROBERT V MOYA (DEC)...

GENERAL INFORMATION: Letters issued February 24, 2003 under Independent Administration of Estates Act. First account filed for period of February 24, 2003, to July 7, 2004. Continued from August 31, 2004 and 10-12-04 to allow counsel to clear notes. Nothing new filed.

THIS CASE IS SET FOR HEARING ON: First account and petition for preliminary distribution and partial allowance.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:.

1. Notice appears complete.
2. There is a discrepancy in the calculation of the charges in the summary of accounting in the amount of \$1,698.05. Please explain.
3. Account fails to include statement disclosing any familial/affiliate relationship between fiduciary and agent hired by administrator during accounting period. Pr.C. § 1064.
4. Accounting fails to include statement disclosing whether all cash assets have been invested in interest bearing accounts/investments. Pr.C. § 1064.

5. Copies of investment account statements verifying the balance of cash and/or securities on hand shall be attached to all inventories and accountings. Local Rules of Court, rule 908. Please file required documentation.
6. Petitioner erroneously requested fees based on amount of estate subject to distribution. Statutory fees are computed on value of estate. Pr.C. § 10800. Need an accurate summary of accounting before statutory fees can be calculated.
7. Disbursement schedule 5 indicates payment to counsel for bond premium in the amount of \$1,096.50. Schedule 5 also indicates a payment to Jernigan Insurance Company for \$1,096.50 for bond premium. Is this an error? Please explain.
8. Petitioner states the estate is not ready to close because a parcel of real property needs to be sold. However, petitioner is requesting preliminary disbursement of the estate. Preliminary disbursement shall not exceed 50 percent of the net value of the estate. Pr.C. § 11623(a)(2). Furthermore, as a general rule, only 50 percent of statutory fees will be allowed in preliminary disbursement.

RECOMMENDATION:

If petition granted court will have to set future dates. Set hearing for filing of receipts and final discharge order for 1-17-06.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BPRBS00735

CASE NAME: DIXIE LEE PITARD

HEARING:

Hearing re: Waiver of Account; Report of administrator, etc.

COUNSEL:

THOMAS G PITARD	(PET)...	LEROY C LABARRE
DIXIE LEE PITARD	(DEC)...	

GENERAL INFORMATION:

THIS CASE IS SET FOR HEARING ON first and final report on waiver of accounting.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Accounting has been waived.
2. Statutory fees are \$5,310.85 this is to be divided equally between current counsel and former counsel's estate. Petitioner waives fees.

RECOMMENDATION:

Recommended for approval. Set hearing for filing of receipts and final discharge order for 1-17-06.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BPRBS00738

CASE NAME: MADELINE GERTRUDE SERLES

HEARING:

Hearing re: PET TO ASCERTAIN BENEFICIARIES & DET DISTRIBUTION

COUNSEL:

TAMMI SERLES (PET)...HARRY A WALLACE

MADELINE GERTRUDE SERLES (DEC)...

KIMBERLY HOLGREM (OBJ)...CALDWELL, KENNEDY & PORTER

GENERAL INFORMATION:

THIS CASE IS SET FOR HEARING ON petition to ascertain beneficiaries and distribution.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Petitioner alleges that 3 of the beneficiaries entered into a written agreement to get their portions of the trust in 1997. Petitioner asks the court to find that they are not entitled to anything further from the trust. The 3 individuals in question are Christopher Serles, Richard Snyder and Vicky Jarvis.
2. Pr.C. § 17200(b)(4) indicates that the court can ascertain beneficiaries and to whom property shall pass. The petitioner has asked the court to enter judgment based on the signed agreements pursuant to C.C.P. § 664.6. However, I can find no dispute on this issue in the file. C.C.P. § 664.6 begins, "If the parties to pending litigation stipulate. . .". There was no pending litigation when the stipulations were entered into. Therefore as there was no dispute, C.C.P. § 664.6 is not applicable. This however, does not mean that the court cannot make a finding under 17200.
3. The stipulations in the file would appear to make it clear that the 3 persons named above have received all assets to which they were entitled or might ever become entitled under the terms of the trust. Therefore it would appear appropriate to find that they are no longer persons entitled to notice or entitled to distribution under the trust.

RECOMMENDATION:

Recommended for approval absent objection.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BPRBS00760

CASE NAME: ESTATE OF CARL L FUNDERBURG ST

HEARING:

Hearing Re: ACCOUNTING.

COUNSEL:

CARL LEE FUNDERBURG JR (PET)...RALPH F GEORGE JR.
CARL LEE FUNDERBURG SR (DEC)...

GENERAL INFORMATION:

THIS CASE IS SET FOR HEARING ON accounting review

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. No accounting filed.

RECOMMENDATION:

When the personal representative does not file an accounting as required, the court shall compel the account by punishment for contempt. Pr.C. § 11050. Issue a citation and have it personally served for OSC re: Why the Personal Representative should not be punished for contempt. If the personal representative does not appear and file the accounting, the representative may be punished for contempt or removed from office or both. Pr.C. § 11052.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JOHN B GIBSON

DATE: 11/30/04 TIME: 8:30 DEPT: B1P

CASE #: BPRBS00770

CASE NAME: PETER SLATE

HEARING:

Hearing Re: FILING OF RECEIPTS & FINAL DISCHARGE.

COUNSEL:

KAREN SLATE
PETER SLATE

(PET)...MACHIAVELLI W CHAO
(DEC)...

GENERAL INFORMATION:

THIS CASE IS SET FOR HEARING ON filing of receipts and discharge order.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. No receipts or discharge order filed.

RECOMMENDATION:

On 10-18-04 the court reviewed a file that I had not had the opportunity to review. It would appear that when I recommended that the hearing on receipts and discharge be set for 10-18 I inadvertently typed 2004 rather than 2005. Recommend that the hearing scheduled for 11-30-04 be vacated and a new hearing date be set for 10-18-05 for the filing of receipts and final discharge. Have the clerk give notice.